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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

CHRISTOPHER A. DIX
PETITIONER,

v.

UNITED AIRLINES, INC.
RESPONDENT

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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27 pp

QUESTIONS PRESENTED

In this case, the Seventh Circuit dismissed the petitioner's lawsuit against United Airlines for its discrimination against him on the basis of race and gender in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. The questions presented are:

1. Whether a member of a group which has been historically and presently subjected to a pattern of flagrant discrimination by an employer can be legally discriminated against by an Affirmative Action plan which favors a protected class which has been historically under-represented to a lesser degree.

2. Whether a prospective employee who is subjected to a racially discriminatory hiring process and realizes that his rejection is certain because of the color of his skin be required to satisfactorily demonstrate certain skills required by the employer immediately after being subjected to a racially hostile screening process.

3. Whether an Affirmative Action plan manufactured by an employer after it failed to dismiss the petitioner's prima facie case of discrimination and remanufactured by the employer even throughout the appellate process is a nondiscriminatory rationale for requiring the petitioner to possess a second language skills not required of African American applicants.

4. Whether an employer's reliance on highly subjective employment test results as the legal nondiscriminatory reason for not hiring the petitioner are pretext to discrimination when the undisputed evidence shows that the recording of petitioner's test results had been falsified.

5. Whether an employer that rejects, on account of race, a qualified white applicant who is able to perform

the federally mandated duties of a flight attendant and then offers the same position to several African Americans who are incompetent and unable to perform the federally mandated duties of a flight attendant be liable for damages incurred by the qualified white applicant.

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PETITION FOR A WRIT OF CERTIORARI

Christopher A. Dix respectfully petitions for a writ of certiorari to review the judgment of the United States court of Appeals for the Seventh Circuit in this case.

JURISDICTION

The judgment of the court of appeals was entered on February 23, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

This case presents questions of broad practical importance to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

A. Factual Background

On the morning of July 28, 1998, the petitioner, Christopher Dix arrived at O'Hare International Airport to pick up a United Airlines' (United) flight attendant, Jan Constantinendes, following the arrival of her flight. The two arrived at Jan's house minutes away from the airport where Jan gave Dix the last of approximately 10-15 "coaching" sessions on how to speak and act at United's Open House Session that Dix would attend later that day. Constantinendes also groomed Dix in preparation of his interview including ironing his clothing to a crisp and clean appearance.

At no time prior to arriving at United's Open House was Dix aware that applicants needed to be fluent in a language in addition to English to be considered for the position of flight attendant. As is required of all flight attendant applicants, Dix arrived promptly at one of United's Open House sessions in Rosemont, Illinois. At the beginning of the Open House, United's hiring agent, Jody Hockinson

announced that all flight attendants needed to be fluent in a second language other than English unless they were African American. Hockinson further stated that anyone who does not meet this requirement should leave (or as counsel for United reiterated should **"Hit the Road"**) and come back when and if United drops this requirement.

In spite of the fact that he is not African American and is not bilingual, Dix stayed to complete the Open House interview even though he knew at that instant that there was absolutely no chance for him to become a United flight attendant and all attempts would only prove to be fruitless. Although Dix successfully completed a written test with a score of 19 out of 20, he was understandably upset by the racially discriminatory remarks made by Hockinson that he had difficulty performing his oral presentation including the proper use of eye contact with other applicants and Hockinson.

At some time during the open house, Hockinson identified and recorded Dix's race and sex as she had been trained and instructed to do by United since this information is necessary for its discriminatory hiring practice. Hockinson did so even though Dix intentionally refused to self-identify his race and sex. At the end of the Open House, Hockinson selected three candidates whom she recognized as being fluent in a second language in addition to English to continue the interview process. Dix, a white male who was not bilingual was not selected and left the Open House.

In Dix's good faith efforts to mitigate his damages, Dix applied for and gained a position of flight attendant with Ryan International Airlines. Dix successfully completed the same flight attendant training program required by the Federal Aviation Administration that United's prospective flight attendants must pass. Dix performed his flight

attendant training with "Excellence" in United's own flight attendant training facility. Furthermore, After United rejected Dix's application for a flight attendant position, United offered the same position to a dozen African Americans who flunked the same flight attendant training program.

Reasons for granting the Petition

The Seventh Circuit has cut Title VII loose from its mooring in important respects that warrant review by this Court. The District Court and Seventh Circuit, in an egregious violation of established standard of review ignored crucial elements that the evidence was sufficient to support liability. This Court's review is warranted to forestall further distortion of Title VII.

United's Affirmative Action plan victimizes an under-represented group.

The Seventh Circuit ignored the "spirit" of Title VII and Affirmative Action when it permitted United to "legally" discriminate against Dix by ruling that United's Affirmative Action plan is legal. The fact that United's Affirmative Action plan was not enacted at the time Dix applied for a flight attendant position and is in conflict with the undisputed racially discriminatory hiring conditions to which Dix was subjected, its Affirmative Action should not even be relevant to this lawsuit. However, even if the plan is relevant Dix cannot be targeted or victimized by any Affirmative Action plan when applying for a flight attendant position.

"United ... began in the 1930's to employ all-female cabin crews [stewardess/flight attendants]" *Diaz v. Pan American World Airways, Inc.* 311 F. Supp 559 (1970) at 562. Even in the 1970's, United refused to hire males as flight attendants unless they resided

in Hawaii. In 1997 and 1998, United offered an opportunity to train as a flight attendant to approximately one African American male for every three African American females who received the same opportunity. If United was sincerely concerned about correcting the imbalance between the number of its African American flight attendants and African Americans in the qualified labor pool, it would provide the same equal employment opportunity for Black males as it does for Black females. The undisputed evidence showed that United offered opportunities to train unqualified African American females as flight attendants instead of qualified males. Furthermore, males continue to be under-represented as United flight attendants

Given the fact that United historically and presently discriminates against males and that any under-representation of African American flight attendants can be attributed to the fact that African American males are discriminated against because of sex rather than race, the only Affirmative Action plan that can correct the manifest racial imbalance is one that provides hiring quotas for males.

As the evidence clearly shows, United's Affirmative Action plan is an invidious discriminatory policy intended to discriminate against both African Americans and males. An Affirmative Action plan is consonant with the purposes of Title VII only if the evidence shows that it was adopted to correct a manifest imbalance in traditionally segregated job categories. *Johnson* 480 U.S. at 630-33. For the foregoing reasons, the Court of Appeals decision confirming the District Courts validation of United's Affirmative Action plan should be reversed.

United subjected the Petitioner to a racially hostile environment that affected his performance of the job application.

Despite the fact that the evidence clearly shows that United manufactured false evidence to make it appear that Dix's application for a flight attendant position was rejected because he had substandard "oral skills" and a substandard "professional image" the Seventh Circuit erred by requiring Dix to demonstrate that he possessed sufficient skills to become a flight attendant after he was subjected to United's racially discriminatory hiring policy. After Dix discovered that he would not become a United flight attendant because of the color of his skin, he still endured the humiliation of explicit and certain rejection which affected his ability to perform his oral presentation.

In *Teamsters v. United States* 465 U.S. at 365, the Court determined that "If an employer should announce his policy of discrimination by a sign reading "Whites Only" on the hiring office door, his victims would not be limited to the few who ignored the sign and subjected themselves to personal rebuffs" Dix was one victim of discrimination who did endure the certain rejection even though it affected his ability to demonstrate his skills by way of a motivational enticement because Dix knew no matter how well he performed during the Open House, he still was not going to become a flight attendant as Hockinson admitted:

> Q. [By Mr. Dix] So even if this white male, or any other group other than African American, if they met every single requirement except for that language requirement, they would be not allowed to continue on with the interview process
> A. [By Hockinson] That is correct.

Dix was also emotionally hindered by United's discriminatory hiring practice to demonstrate his skills since he was understandably upset that such a racist comment had been uttered at the commencement of an employment Open House. What the Seventh Circuit failed to understand is that Dix was already a **victim** of an illegally discriminatory hiring practice even before he applied for the flight attendant position and that any test results brought forth by United are of no relevance to this lawsuit. For this reason alone, Dix should have had Summary Judgment entered in his favor.

United's Affirmative Action plan was manufactured after it failed to dismiss the Petitioner's prima facie case of discrimination.

The Affirmative Action plan articulated by United is irrelevant to this lawsuit for two reasons:(1) the Affirmative Action plan did not exist at the time Dix applied for a flight attendant position on July 28, 1998. (2) the Affirmative Action plan articulated by United is diametrically opposed to the racially discriminatory hiring practice to which it subjected Dix

On June 12, 1998, United's Flight Attendant Manager sent a letter to one of its current African American employees, Allisah Love, who unsuccessfully attempted to transfer to a flight attendant position. In it she wrote, "We pay considerable attention to standardization so that each applicant is evaluated fairly and on the same criteria as every other applicant for the position." In Kress's answer to Interrogatories submitted by Dix, she then claimed that since 1995, "African Americans are considered without regard to their ability to speak conversantly in a second language." United's Affirmative Action program could not have existed since it permits African Americans to

be evaluated using different criteria than is expected of non-African American applicants.

United's articulated Affirmative Action plan is inconsistent with the undisputed discriminatory hiring conditions experienced by Dix. Kress testified under oath that "Applicants who participate in an open interview session [at times when United only selects applicants who are conversant in a second language] and otherwise meet United's qualifications for a flight attendant position, but are not conversant in a language in addition to English, are notified in writing that their applications will be maintained for a period of one year." To the contrary, when Dix applied for a flight attendant position, non-African-American candidates are not permitted to apply for a flight attendant position and are instructed to leave. It is United's position that Dix had no right to even be at the Open House interview and Dix was informed by United's lawyer that he should have **"HIT THE ROAD"** when Hockinson told him to leave.

Thus, United failed to articulate an Affirmative Action plan that actually *existed* when Dix applied for a flight attendant position and, therefore, never articulated a nondiscriminatory rationale for its racially motivated hiring policy as is required for a defendant to defeat a proven case of discrimination *Johnson,* 480 U.S. at 626.

Furthermore, United presented new and false evidence in support of its Affirmative Action plan. United claimed that 15% of the qualified labor pool is African American. The Petitioner proved that the qualified labor pool, however, is less than the African-Americans in the general population which was 12.8% based upon the most recent U.S. Census data available at the time Dix applied for a flight attendant position. Dix pointed to the fact that Blacks have a lower percentage of high school graduates than whites and that Blacks have a higher percentage of felony

convictions than whites. Because a flight attendant applicant must be a high school graduate and must not have been convicted of a felony, the percentage of African Americans qualified to be flight attendants is less than 12.8%. Regardless of whether it was done because of its "corporate insanity" or its crass arrogance, United first stated that the qualified labor pool is the job category of Public Transportation Attendants. Because of the fact that United requires no experience in such a category to become a flight attendant and offers no proof that Public Transportation Attendants can pass federally mandated flight attendant training like Dix did with "Excellence" this figure can only be rejected and should only be addressed by the Court in disbarring and fining United's attorneys for proffering such nonsense. By rejecting Dix's evidence that United's completely fraudulent claim that African Americans account for 15% of the qualified labor pool, the Seventh Circuit failed to draw reasonable inferences in his favor when considering United's motion for Summary Judgment as required by *Celotex Corp. v. Catrett*, 477 U.S. 317, 322.

United manufactured false evidence to conceal its illegally discriminatory reason for not hiring the Petitioner.

United presented to the District Court and the Seventh Circuit, a preliminary evaluation form which United claimed was used by Jody Hockinson to record her evaluation of Dix's "oral skills" and "professional image." However, the undisputed evidence shows that this form which shows Dix received substandard scores is false and manufactured. Hockinson stated under oath that "seven African-Americans were among the 41 applicants who completed the open house session attended by Dix" but the preliminary

evaluation form that United claimed was used to record Dix's scores shows that 36 applicants were present at this particular open house session. Furthermore, Dix stated under oath that he sat between two other applicants who were identified as applicant number 30 and 32, but the preliminary evaluation form that United falsely claimed was used to record Dix's scores shows that there was no applicant number 30. A reasonable person could only conclude that United falsified evidence to make it appear that Dix has substandard "oral skills" and "professional image." United produced no other document that was consistent with the testimony of both parties so a reasonable fact finder could only conclude that United's claim that Dix has substandard skills is, in fact, pretext for discrimination.

Furthermore, there is strong evidence that good "oral skills" and a good "professional image" are not even required to become a United flight attendant. For instance, United claims that a person with below standard oral skills has "poor listening skills, i.e. needed repeated instructions/ clarification, **does not follow instructions**" and one who use of "content/form of language [is] often inappropriate, [and who uses] slang." The undisputed evidence shows that Hockinson's "oral skills" are so decrepit that giving her instructions is no more effective than talking to a "Brick Wall" as evidenced by her deposition:

> Q. [By Mr. Dix] "...and don't shake your head yes or no. Actually answer yes or no...Answer yes or no."
>
> Q [By United's attorney] In other words, you can't say "uh-huh" or "uh-huh." You have to say yes or no or give some sort of an audible answer.

Obviously giving simple instructions to a United flight attendant is just "wasting your breathe" because twice during her short interview (30 double spaced pages) Hockinson twice answered the following to Dix's question:

> A. [By Jody Hockinson] "Uh-huh." (Deposition p.10)
> A. [By Jody Hockinson] "Uh-huh." (Deposition p.13)

There is strong evidence that shows United's flight attendants as well as its trainers collectively have a substandard "professional image." United considers "[one who] did not demonstrated appropriate use of humor" and one who is "unfriendly, unapproachable, impolite, or rude" to have a substandard "professional image." The undisputed testimony showed that at United's own flight attendant training facility, United provides its prospective flight attendants with jumpsuits to wear in an attempt to protect ones street clothing while performing certain exercises. One such jump suit which bears the United Logo also bears United's "safety training theme" which is **"Kill Them All. Let God Sort Them Out."** Dix found this kind of humor to be extremely morbid and inappropriate since United has actually had some of its passengers die on its aircrafts.

The Seventh Circuit failed to take notice of this evidence when it granted summary judgment in favor of United in opposition to *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 which requires that all reasonable inferences be drawn in the nonmoving party's favor.

Lastly, legally discriminatory hiring practice like the ones validated in *McNamara v. City of Chicago* 867 F.Supp at 750 and Johnson 480 U.S. at 635 did not authorize blind hiring without concern for qualifications. However, the undisputed evidence

shows that United does authorize blind hiring (or should we say **"deaf hiring"**) without concern for qualifications since it rejected Dix because of his race who is "excellent" at performing the duties of a flight attendant and thereafter attempted to hire twelve African American **flunkies** who could not pass the minimum federally aviation requirements for flight attendants so that all airline passengers can have some opportunity to survive an unfortunate airline crash instead of letting God decide where their next trip ends.

Conclusion

For the foregoing reasons the writ of certiorari should be granted.

Respectfully Submitted
Christopher A. Dix

Appendix:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHRISTOPHER A.DIX Plaintiff,	)	
vs.	)	Case No. 99 C 2597
UNITED AIR LINES, INC., Defendant.	)	(filed April 20, 1999)

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

Plaintiff Christopher Dix, who filed this lawsuit pro se, claims that defendant United Air Lines, Inc. discriminated against him on the basis of his race (Caucasian) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a) & (l), and 42 U.S.C. §1981 in connection with Dix's application to become a flight attendant. Specifically, Dix says that United required Caucasian applicants to be bilingual but did not impose the same requirement on African-American applicants; he alleges that he was subjected to different terms and conditions of employment based on his race. Though Dix does not specifically allege in his complaint that he was not hired as a result of differential treatment, it is a fair inference that that is what he claims.

United has moved for summary judgment, arguing that the different requirements for Caucasian

and African-American applicants had nothing to do with why Dix was not hired, and that even assuming it did, the policy was entirely legal. Dix has likewise moved for summary judgment, arguing that he was denied employment due to an illegally discriminatory hiring practice.

Facts

United periodically conducts "open interview" sessions for prospective flight attendants. During some periods, United seeks to hire flight attendants who are conversant in a second language besides English. During these periods, otherwise qualified applicants who are not conversant in a second language are advised that their applications will be kept on file for a year and will be considered when United is not seeking applicants with foreign language skills.

Since 1995, during periods when it is seeking bilingual flight attendants, United has excused African-Americans from the second-language requirement, in an effort to increase its minority hiring. Overall, however, a large number on non-bilingual applicants are selected to participate in United's training program for flight attendants. In 1997, 66% of the non-bilingual applicants selected (1303 of 1969) were white; in 1998, the figure was 65% (1175 of 1811).

In July 1998, Dix saw a newspaper advertisement placed by United seeking "bilingual flight attendants." The ad gave the time and place for several open interview sessions in Rosemont, Illinois. Dix, though not bilingual, attended one of the sessions. He says that at the outset of the session, a United representative stated to those present that "everybody here has to be conversant in another language unless you are African-American" and that "if you don't meet these requirements, you should

leave." Dix was not bilingual or conversant in a second language, but he did not leave.

Dix and the forty or so other applicants who stayed were taken to another room where each was given a "Personal Information Sheet" and a "Flight Attendant Application Registration Form" to complete. On the form, Dix checked off that he was conversant in an "other" language, but did not say what language it was. (The form listed only foreign languages, not English; presumably Dix was indicating that English was the "other" language in which he was conversant.)

Following administration of a written test, the applicants were each asked to give an oral presentation on why he or she would be a good flight attendant. In his interview, Dix received poor scores, below the minimum acceptable for "professional image" and "oral communication skills." It is undisputed that it never came up that Dix was not conversant in any language other than English. After the presentations, United's representative announced that three people were being chosen to continue with the interview process; Dix was not one of the three, nor were any African-Americans.

In 1973, the Equal Employment Opportunity Commission sued United, alleging that it had engaged in a pattern and practice of discrimination on the basis of race in employment in a number of positions, including that of flight attendant. EEOC v. United Air Lines, Inc., No. 73 C 972 (N.D. Ill). In 1976, United entered into a consent decree requiring it to take affirmative measures to recruit African-American flight attendants and setting short-term and long-term goals for the representation of African-Americans in flight attendant positions. At that time, 10.3% of United's flight attendants were from minority groups; it is unclear what percentage of its flight attendants were African-American. The decree included a "long term" goal, which the parties hoped United would be able to

meet within five years, that 17% of United's flight attendants would be members of minority groups.

United still maintains an affirmative action program with respect to the hiring of African-American flight attendants. As of January 1, 1998, 8.66% of its flight attendants were African-American, as compared with 15% in the qualified labor pool.

Discussion

We will deal with United's summary judgment motion first. In addressing that motion, we construe the facts in the light most favorable to Dix, the non-moving party, and draw reasonable inferences in his favor. Celotex Corp. v. Catrett, 417 U.S. 317, 322 (1986).

Assuming for purposes of discussion that United in fact had an unlawfully discriminatory policy, Dix must have evidence from which a reasonable fact finder could conclude that he was injured as a result of that policy. See Melendez v. Illinois Bell Telephone Co., 79 F.3d 661, 668 (7th Cir. 1995). He has none. Dix noted on the Personal Information Sheet that he was conversant in another language. Even though this was untrue, it is undisputed that Dix was not asked about this in his interview. In short, there is no evidence that his inability to speak a language other than English had anything to do with the fact that he was not hired. Indeed, there is no evidence that United's representatives had any idea that he lacked the ability to speak another language. Dix's alleged injury (the non-hiring) thus was not the result of the allegedly discriminatory policy. See, e.g., Carpenter v. Board of Regents of University of Wisconsin, 728 F.3d 911, 915 (7th Cir. 1984)(disparate impact case; plaintiff must show he was injured by challenged policy); Coe v. Yellow Freight System, Inc., 646 F.2d 444, 451 (7th Cir. 1981)(same). Rather, the evidence

is undisputed that Dix was rejected because he performed poorly in his interview.

Dix's fallback position is that he was hampered in his interview because he was distressed by the fact that United's representative had started the session by announcing what Dix felt was a discriminatory policy. It is conceivable that a Title VII or §1981 plaintiff could, in appropriate circumstances, sustain a claim on such a theory. To illustrate, imagine that United's representative had started the meeting by saying that black people don't have what it takes to be a flight attendant, or that any man who applies to be a flight attendant must be gay. A plaintiff who could show that he or she was chilled from proceeding, or that his performance at the ensuing job interview was affected, by such discriminatory statements might well be able to make out a claim under Title VII. But even if this is a viable theory in the abstract, a plaintiff making such a claim would have to show, at a minimum, that the employer's statements reflected unlawfully, discriminatory attitudes or beliefs; otherwise an employer would be subject to suit for announcing a perfectly legal affirmative action plan. We turn, therefore, to United's justification for its differential treatment of Caucasians and African-Americans at the interview session.

United maintains that excusing the two-language requirement for African-Americans was part of a legal affirmative action plan. As noted earlier, United entered into a consent decree with the EEOC in 1976 requiring it to take affirmative steps to increase the percentage of African-American flight attendants. It maintains that its differential treatment of African-Americans and other applicants at the Rosemont interview session was one aspect of its continued

pursuit of this policy.1 An affirmative action plan is valid under Title VII if it is adopted and designed to correct manifest racial imbalances in traditionally segregated job categories and does not unnecessarily trammel the interests of white employees. Johnson v. Transportation Agency, 480 U.S. 616, 628 (1987).

United has offered some evidence of a historical imbalance among African-Americans in flight attendant positions. As of January 1998, 8.66% of United's flight attendants were African-American; the general population is 15% African-American. Dix objects that the comparison is not relevant, as United hires only persons with a high school education as flight attendants; he says that United should have to demonstrate an imbalance between its work force and the percentage of African-Americans with a high school education. But Johnson makes clear that a perfect comparative fit of the type Dix seeks is not required when an employer is attempting to justify an affirmative action plan as a defense to a discrimination suit; the Supreme Court in Johnson noted that in Steelworkers v. Weber, 443 U.S. 193, 198-99 (1979), it had approved a comparison quite similar to the one that United has used here. Johnson, 480 U.S. at 633, nn.10 & 11.

United's evidence is somewhat thin on the question of whether the imbalance is "historic." It claims that the 1976 consent decree "recognized" a historic imbalance; however, it cites no particular provision of the decree to support this claim, and we see no such finding in the decree itself. But the

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[1] United's representative indicated when deposed that they were unaware of any written embodiment of its affirmative action policy, but that does not make the policy illegal. Dix does not dispute that the policy of excusing African-Americans from the two-language requirement exists; indeed the existence of the policy forms the very basis for his lawsuit.

attachments to the decree reflect that as of 1976, 10.3% of United's flight attendants were members of minority groups (a classification considerably broader than African-Americans), as compared with 17% in the population at large; the percentage of minorities in the general population was not materially lower in 1976 than in 1998. So United has succeeded, though by the skin of its teeth, in showing that a historic imbalance exists.

To determine whether an affirmative action plan unnecessarily trammels the interests of white employees, a court must consider whether the plan absolutely bars whites from employment, whether white workers are discharged because of the plan, and whether the plan is intended to last only until the company can achieve racial balance. See Weber, 443 U.S. at 208. United's plan certainly qualifies on the first two aspects of this test. The plan does not bar whites, not even non-bilingual whites, from employment as flight attendants. United has offered evidence, uncontradicted by Dix, that in 1997-1998, fully two-thirds of the non-bilingual applicants selected by United were Caucasians. Moreover, the plan relates only to hiring, not to discharge; there is no indication that white workers are discharged because of the plan.

Though United has offered no evidence concerning the anticipated duration of the plan, this is not critical in this case, for three reasons. First, it appears that United is still operation pursuant to the 1976 consent decree, which means that its affirmative action program is subject to court supervision. Second, the burden of any uncertainty falls upon Dix, not United; when an employer articulates an affirmative action plan as the basis for the challenged employment decision or action, the burden lies with the plaintiff to show that the plan is invalid or that the employer's reliance on it is a pretext for

discrimination. Johnson, 480 U.S. at 626; Janowiak v. Corporate City of South Bend, 836 F.2d 1034, 1036 (7th Cir. 1987). Dix has done neither. Finally, United's plan takes a gradual approach with a minimal intrusion on the legitimate expectations of other applicants; non-bilingual Caucasians like Dix still have ample opportunities for employment as United flight attendants. Under these circumstances, the longer duration of the plan is less significant. See Johnson, 480 U.S. at 640.

In sum, Dix has offered no evidence form which a fact finder could conclude that United's affirmative action plan is invalid. He therefore cannot defeat United's motion for summary judgment

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 22, 2001*
Decided February 23, 2001

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*
Hon. RICHARD A. POSNER, *Circuit Judge*

No. 00-3513

CHRISTOPHER A. DIX
Plaintiff-Appellant,

v.

UNITED AIRLINES, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 99 C 2597

Matthew F. Kennelly, *Judge*

(filed September 27, 2000)

ORDER

Christopher Dix, a white male, applied to become a flight attendant for United Airlines, and when United refused to hire him, he sued the airline for discriminating against him on the basis of his race and gender, 42 U.S.C. § 2000e. The district court dismissed Dix's gender discrimination claim and later

granted summary judgment for United on Dix's race discrimination claim. We affirm.

Dix attended a United open-house interview session for prospective flight attendants in 1997 [sic]. At that open house, United flight attendant Jody Hockinson announced that United was then seeking only candidates who were conversant in a language besides English. Hockinson also announced that the second language requirement was waived for African-American candidates, as part of United's affirmative action plan. Despite the fact that Dix did not speak a second language, he filled out an application and checked off the "conversant" box in the language line-item marked "other." Later Hockinson asked each applicant to give a brief oral presentation on why he or she would be a good flight attendant. Based on the presentations, United evaluated the applicants on their professional image and oral communication skills, assigning each applicant a score from one to five, with five being the highest score. United required a minimum score of three in both categories to continue with the interview process. Dix received a score of one for professional image and two for oral communication skills, and was not selected to continue with the interview process. None of the seven African-Americans who completed the application process to this point was selected to continue either.

Dix filed a charge of discrimination with the EEOC, alleging that United discriminated against him based on race and objecting to United's policy of waiving the second-language requirement for African American applicants. The EEOC dismissed Dix's claim and issued a right-to-sue-letter, and Dix then timely filed this suit against United, alleging that United had discriminated against him on the basis of race and gender.

The district court dismissed the gender discrimination claim because Dix had not presented that claim to the EEOC, and later granted summary judgment for United on the race discrimination claim. The court found that Dix could not have been harmed by the purportedly discriminatory second-language policy because United had no reason to know that, contrary to his claim on his job application, he could not speak a second language. Moreover, the court determined that the undisputed evidence showed that Dix was not hired because he performed poorly in his interview. In the alternative, the district court found that United's affirmative action plan was valid.

On appeal, Dix presents a host of issues, non of which he supports with citations to the record or relevant legal authority, arguably in violation of Fed. R. App. P 28(a). *See Collins v. Educ. Therapy Ctr.*, 184 F.3d 617, 622 (7th Cir. 1999); *Mathis v. New York Life Ins. Co.*, 133 F.3d 546, 548(7th Cir 1998)(per curiam). In addition, Dix's brief lacks a statement of facts, also in violation of Fed. R. App P. 28(a). *See Collins*, 184 F.3d at 622. Nevertheless, because Dix proceeds pro se we will address the merits as best we can.

Dix first argues that the district court erred in finding that he had not been injured by United's second-language policy. Dix contends that United did in fact know that he spoke only English, and deliberately downgraded his oral communication and professional image skills in order to cover up its discriminatory reason for refusing to hire him. But he points to nothing in the to establish either that United knew he spoke only English or that United falsely assessed his qualifications. Dix instead seeks to demonstrate his suitability for the job by noting his employee-of-the month award at the Lone Star

Steakhouse and Saloon around the time of his interview and his subsequent hiring by another airline as a flight attendant. Even if we assume that United's policy has somehow injured him, Dix's contentions about his ability do nothing to undermine the credibility of United's explanation that it did not hire Dix because he performed poorly at his interview at the open house. *See Baron v. City of Highland Park*, 195 F.3d 333, 341 (7th Cir. 1999) (affirming summary judgment in ADEA case for village that refused to promote applicant who gave poor interview).

Dix next argues that United's affirmative action plan is unlawful because no "racial imbalance" exists among United's flight attendants. An affirmative Action plan is legal if it is designed to correct manifest racial imbalances in traditionally segregated job categories and does not unnecessarily "trammel" the interests of white employees. *Johnson v. Transportation Agency,* 480 U.S. 616, 628-30 (1987). The district court found that United had offered sufficient evidence of historic racial imbalances, and United's affirmative action plan did not hinder white employees because they could take part in other open-house interviews that did not impose a bilingual requirement. Dix makes several cursory arguments that any "racial imbalance" among United flight attendants is illusory, but points to no supporting evidence and has therefore waived them. *See United States v. Vest,* 116 F.3d 1179, 1189, n.4 (7th Cir. 1997).

AFFIRMED